BP
605
.B72
D45x
1993

. Department of Justice
shington, D.C. 20530

HARVARD LAW LIBRARY
3 2044 049 823 941

HD

Evaluation of the Handling of the Branch Davidian Stand-off in Waco, Texas

February 28 to April 19, 1993

Edward S.G. Dennis, Jr.

October 8, 1993

Redacted Version

Digitized by Google

FINAL

REPORT TO THE DEPUTY ATTORNEY GENERAL

HARVARD LAW SCHOOL LIBRARY
DEPOSITED BY THE
UNITED STATES GOVERNMENT

DEC 07 1993

EVALUATION OF THE HANDLING OF THE BRANCH DAVIDIAN STAND-OFF IN WACO, TEXAS BY THE UNITED STATES DEPARTMENT OF JUSTICE AND THE FEDERAL BUREAU OF INVESTIGATION

By: Edward S. G. Dennis, Jr.

October 8, 1993

Redacted Copy to Public

BIP
605
.B72
D45x
1993

J 1.2:W 11/EVALUA

Digitized by Google

For sale by the U.S. Government Printing Office
Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328

Report ISBN 0-16-042973-0
Recommendations ISBN 0-16-042974-9
Evaluation ISBN 0-16-042975-7
Lessons ISBN 0-16-042976-5
Set ISBN 0-16-042977-3

Digitized by Google

TABLE OF CONTENTS

INTRODUCTION 1

EXECUTIVE SUMMARY 2

SUMMARY OF THE NEGOTIATIONS 5

EVALUATION. 29

A. COULD THE FBI HAVE PREVENTED THE DEATHS OF THE BRANCH DAVIDIANS? 29

1. The Fire 29
2. Mass Suicide or Mass Murder? 33
3. FBI Restraint 34
4. Contingency Planning. 36

B. WAS THE FBI'S NEGOTIATION STRATEGY AND ITS IMPLEMENTATION ADEQUATE TO RESOLVE THE CONFRONTATION WITH THE BRANCH DAVIDIANS? 39

1. The Negotiation Strategy 39
2. Pressure Tactics 43
3. Communication Between The Negotiating And Tactical Elements 46
4. The Role Of FBI Behavioral Experts 48
5. 53

C. WAS THE DECISION MAKING PROCESS FOR FORMULATION, APPROVAL AND IMPLEMENTATION OF THE PLAN FOR THE TEAR GAS INSERTION ADEQUATE? 55

1. The Briefing Of The Attorney General 55
2. Execution Of The Gassing Plan 58
3. Contingency Plan For Fire 60

RECOMMENDATIONS 61

CONCLUSION 63

Digitized by Google

Digitized by Google

INTRODUCTION

This is a critical retrospective evaluation of the activities of the United States Department of Justice ("Department") and the Federal Bureau of Investigation ("FBI") during the fifty-one day stand-off at the Branch Davidians' Mt. Carmel compound near Waco, Texas which ended on April 19, 1993 when fire consumed the compound, killing David Koresh and most of his followers. To make this evaluation, I have reviewed the procedures followed by the Department and the FBI, giving particular attention to the means employed, the alternatives considered and the decisions made in attempting to resolve the stand-off.

I have not been called upon to conduct a de novo factual inquiry. A comprehensive factual report is being prepared by the Department and the FBI. I have primarily relied upon the record gathered by the Department as the basis for the conclusions in this Report, supplemented by a number of follow-up interviews. However, I am satisfied that the factual inquiry by the Department was conducted in a thorough and objective manner.

Prior to my appointment, the Department had completed over 800 field interviews and gathered pertinent documentation. They continued to gather documents and conduct interviews thereafter. I have been afforded access to documents gathered in that effort and to the reports of interviews conducted for the factual investigation. In addition, since my appointment I

Digitized by Google

participated in a number of Department interviews. I have also conducted independent interviews of some witnesses.

The scope of this Report is confined to the activities of the Department and the FBI. I have not been asked to evaluate and I make no judgments about the activities of the Bureau of Alcohol, Tobacco and Firearms ("ATF") leading up to the February 28, 1993 gun battle at Mount Carmel. I have been assisted in my investigation and writing of this Report by Ms. Suzan E. DeBusk, Esq. whose invaluable contribution I gratefully acknowledge.

EXECUTIVE SUMMARY

After reviewing the stand-off at Waco, including the progress of the negotiations and the conception, approval and implementation of the tear gas plan on April 19, 1993, this Report concludes as follows.

The fire on April 19, 1993 was deliberately set by persons inside the compound and was not started by the FBI's tear gas insertion operations. It is not certain, however, whether a substantial number of the persons who died in the compound on April 19 remained inside voluntarily, were being held in the compound against their will or were shot in order to prevent their escape from the fire. Preliminary medical reports are that a substantial number of individuals had died of gunshot wounds. Among those shot were young children. Koresh's body was found with a gunshot wound to the forehead. The FBI did not fire on

Digitized by Google

the compound during the tear gas operation, although shots were fired at the FBI from the compound. The FBI did not fire on the compound at any time during the fifty-one day stand-off.

The evidence forecasting David Koresh's intention to orchestrate a mass suicide was contradictory. Koresh and his followers repeatedly assured the negotiators that they did not intend to commit suicide. On several occasions agents were told that suicide was against the Davidians' religious beliefs. However, one released member said there was a suicide plan. Other released members denied there was a suicide plan. In any event, the risk of suicide was taken into account during the negotiations and in the development of the gas plan.

The FBI developed a coherent negotiating strategy to talk the Davidians out. However, the negotiators had strong objections to pressure tactics they felt were counterproductive. The use of pressure tactics immediately after Koresh sent out Davidians from the compound may have undermined the negotiators' credibility and blunted their efforts to gain the Davidians' trust and to discredit Koresh in the eyes of his followers. Nevertheless, tactical actions designed to increase the safety margin for agents were appropriately given priority over negotiating considerations. I conclude that the events of April 19 were the result of David Koresh's determined efforts to choreograph his own death and the deaths of his followers in a confrontation with federal authorities to fulfill Koresh's apocalyptic prophesy. The deaths of Koresh, his followers and

Digitized by Google

their children on April 19th were not the result of a flaw in the gas plan or the negotiation strategy.

The FBI used many qualified experts, including its own FBI behavioral experts to evaluate Koresh. Their assessments were thorough and many proved quite accurate.

REDACTED FROM PUBLIC REPORT PENDING RELEASE OF IMPOUNDED MATERIAL.

The Attorney General was adequately briefed on the tear gassing plan, was fully informed of the options, and was given a realistic appraisal of the risks. All reasonable alternatives were considered and the decision to insert CS gas was a reasonable one. I conclude that an indefinite siege was not a realistic option. According to the plan, gas would be inserted in stages and the FBI would wait 48 hours for it to have an effect. As the plan was being implemented, the tanks were ordered to enlarge openings in the compound to provide escape routes for the Davidians.

The FBI did anticipate that a fire might occur at the compound. Fire fighting equipment was not kept close to the scene because the heavy weaponry used by Koresh and his followers presented unacceptable risks to fire fighters. In any event, the independent arson experts concluded that the fire spread so quickly in the poorly constructed compound that even prompt fire fighting efforts would have been ineffective.

Digitized by Google

The FBI exhibited extraordinary restraint and handled the crisis with great professionalism.

SUMMARY OF THE NEGOTIATIONS

ATF requested assistance from the FBI on February 28, 1993 after ATF agents had attempted to serve an arrest and search warrant on the Branch Davidian Compound. Four ATF agents were killed, 20 agents wounded and an unknown number of Davidians were killed and wounded in the ensuing gun battle.

The FBI assembled a group of its best and most experienced negotiators from its Critical Incident Negotiations Team ("CINT"). The FBI's behavioral experts from its National Center for the Analysis of Violent Crime ("NCAVC") were assigned to assess the behavior of Koresh and his followers. ATF specifically requested the assistance of the FBI's Hostage Rescue Team ("HRT"), a highly trained and rigorously selected counterterrorist unit designed for high threat tactical assignments. FBI SWAT teams were deployed along with a full crisis management team consisting of three SACs and four ASACs supervising two command posts with full technical support. The FBI arrived at Mt. Carmel on February 28, set up its command posts and began telephone negotiations with the people inside the compound. It was estimated that over 100 men, women and children with nearly 250 weapons were inside the compound. The compound was stocked with a year's supply of food rations and was

Digitized by Google

otherwise prepared to withstand an extended siege. David Koresh, the group's charismatic leader, had been wounded in the gun battle with ATF.

Early negotiations were successful, and twenty-one children and two elderly adults exited the compound during the first six days of the stand-off. On the evening of February 28, 1993 Koresh promised that if a recorded message from him were played on a certain radio station, children would be released from the compound two-by-two. The message was played for the first time at approximately 7:30 that evening. About an hour later two children, Angelica and Crystal Sonobe, were escorted out of the compound by their mother, who went back in. The message was rebroadcast and two more children, Rene Fagan and Nehara Fagan, were released. The next morning at 6:30 two more children were released; at 10:30 two more were released; at 4:00 two more were released; at 8:30 two more were released and at 11:00 two more were released.

The next day, on March 1, 1993 the negotiator asked Koresh if he was going to commit suicide and he replied "I'm not going to commit suicide." He also stated "if I wanted to commit suicide, I would have done it already." The negotiator asked Koresh, "Are you going to let any of your other people kill themselves or die in there?" Koresh replied "I'm not going to do that."

The night of March 1 Koresh advised that everyone would come out if a tape he recorded were played on the radio. On the

Digitized by Google

morning of March 2, 1993 detailed arrangements were made for the surrender of Koresh and the other Davidians upon the playing of the tape. Koresh agreed he would be carried out on a stretcher and would go to a Bradley ambulance with three of the children, while everyone else would go to a waiting bus. Koresh was to exit first while Steve Schneider[1/] was to remain in the compound to coordinate the release of the remaining members at one minute intervals. Emergency and transport vehicles were positioned.

Koresh recorded his tape and at the negotiators' request recorded a preamble affirming his promise to surrender. During the day of March 2, two elderly women, Katherine Matteson and Margaret Lawson, and four children exited the compound. Koresh was questioned about suicide and stated, "I don't think anyone's going to commit suicide."

The tape was broadcast as agreed between 1:30 and 2:30 p.m. on March 2. The Davidians then advised that they were moving Koresh down the stairs on the stretcher, but that he was in pain from his gunshot wounds suffered in the February 28 shoot-out. Progress was delayed when Koresh began a prayer session. Then Schneider began to preach to the negotiators. Finally, Schneider informed the negotiators that "God had told Koresh to wait". By the evening of March 2, other Davidians had

---

1/ Schneider, who had a degree in religion from the University of Hawaii and taught religion at that school, was Koresh's main spokesman and talked extensively with the negotiators.

Digitized by Google

come to the phone and advised the negotiators that "God had told Koresh to wait." Koresh would not come to the phone.[2/]

Meanwhile the United States Attorney's office had arrested and charged the two elderly women who had exited the compound with conspiracy to commit murder. On March 3, 1993 the Davidians heard a broadcast on CNN reporting the arrests. The FBI consolidated log reflects concern by the negotiators that if the Davidians heard of the arrest it would have a "devastating effect" on the negotiations. The FBI immediately persuaded the United States Attorney's office to drop the charges and hold the women as material witnesses instead. The compound was immediately notified of that fact.

At this time military style vehicles were visible from the compound. This was contrary to the advice of some of the negotiators and behavioral scientists, who advised that threatening activities would not be effective against Koresh and his followers and would likely draw them closer together. Steve Schneider complained that the tanks were running over the guard shacks and stated that it is "part of a program of intimidation."

2/ Immediately after the tape was broadcast, the consolidated log shows that a former cult member called and advised that Koresh had put a message of his own impending death in the tape by reference to the "eagle and the carcass." A Davidian who left the compound in mid-March reported that the March 2 surrender plan was actually a plan for mass suicide. He stated that Koresh had planned to blow himself up in front of the FBI. The remaining persons in the compound were going to use explosives to commit suicide before they could be apprehended by the FBI. The Davidian reported that the plan was not carried out because "God told Koresh to wait."

Digitized by Google

Later on March 3 the negotiators were told that if Koresh were allowed to give a "bible study" then the child Mark Jones would be released. The study was given and Jones was promptly released. His brother Kevin was also released the next day and his sister Heather was released on March 5. Heather Jones would be the last child released.

Contact with Koresh over the next month and a half met with limited success. Koresh continued to use the children as a shield against FBI efforts to resolve the stand-off. Koresh threatened to fire on FBI positions and to blow up government vehicles. The bulk of Koresh's contact with FBI consisted of proselytizing the negotiators in marathon sermons of rambling exhortations. Koresh claimed to be Christ and to have knowledge of the seven seals of the apocalypse. Twelve more adults would exit the compound over the next eighteen days, but Koresh would refuse to leave claiming that his followers were free to make their own decisions whether to remain in the compound with him. More than seventy would perish with Koresh on April 19th.

On March 5 Koresh requested a suture kit for his hand, a videotape of the released children and six gallons of milk for the children within the compound. All of these requests were granted. The Davidians began requesting that Peter Gent's body be removed. Gent had been killed in the February 28 shoot-out with the ATF and his body remained outside the compound. They also demanded a line to the media and asked that the Bradley

Digitized by Google

military vehicles be removed from the property. These requests were denied.

On March 6, 1993 Koresh told the negotiators that if he were allowed to speak with an ATF undercover agent, then he would send Melissa Morrison, a six year old girl, out of the compound. Melissa came to the phone and said she would like to leave. Her mother gave instructions for family members to care for her. The negotiators told Koresh that the agent was not in Waco. Melissa Morrison was not released and presumably died in the April 19, 1993 fire.

On March 7 Koresh stated that if the negotiators' could "show him" the third seal of the apocalypse, then he would release some children. The negotiator attempted to discuss the seal, but Koresh stated that the negotiator had "failed" and refused to release anyone. Davidian member Wayne Martin[3/] then came to the phone and demanded a line to the media so that they could find a lawyer to file a lawsuit against the government. Juliette Martinez over the telephone told the negotiators that if she came out they would separate her from her children and put her in jail. This day there were 42 separate conversations lasting eleven and a half hours.

The morning of March 8 three Davidians buried the body of Peter Gent. Later that day Waco Sheriff Jack Harwell was

---

3/ Martin, a Harvard Law School graduate, had joined Koresh with his whole family. His wife and three youngest children exited the compound during the stand-off, but Martin remained inside with his two oldest daughters (ages 13 and 15).

Digitized by Google

allowed to speak with Koresh as a negotiator. Koresh told the sheriff not to worry because they were not going to commit suicide. He asked for milk and told the sheriff that he had sent out money to pay for those necessities. Shortly after that conversation 6 gallons of milk were sent in. That night the Davidians sent out a videotape of the children in the compound. The negotiators' log shows that when the tape was reviewed there was concern that if the tape were released to the media Koresh would gain much sympathy.

On March 9 at about 2:15 a.m. power to the compound was cut off. Later that morning two public address speakers with 100 watt amplifiers were set up. Koresh stated that if the FBI did not turn the power back on, he would not communicate. Power was restored about 10:30 that morning, so that the Davidians could listen to the daily press conference. Later that afternoon the Davidians displayed a banner from the compound reading "God help us, we want the press."

The evening of March 9 the negotiators had a conversation with Judy Schneider and Rachel Koresh,[4] both of whom wanted a doctor to be sent in to treat Judy's finger, which

---

[4] According to written accounts of former Branch Davidians, Rachel Koresh was David Koresh's first wife and the mother of three of his children. They were married in 1984 when she was 14 years old. Her father, Perry Jones, was killed in the February 28 shoot-out. Judy Schneider was the legal wife of Steve Schneider, but she had been taken by David Koresh as one of his wives and was the mother of one of his children.

Digitized by Google

had been wounded in the shoot-out. The negotiator refused and told Judy to come out to be treated.

The negotiator then had a conversation with Steve Schneider and told him to turn off the halogen lights pointing out to the perimeter or power would again be cut off. There was concern about the Davidians using the lights to monitor FBI movements around the perimeter. The Davidians delivered another videotape out of the compound that night.

About 2:30 in the morning on March 10 power to the compound was cut off again. It appears to have been turned back on later in the day. Some clearing of the grounds must have occurred that day as well, because that evening Schneider complained about the destruction of a Harley Davidson motorcycle.

Around 1:00 in the morning of March 11 Schneider told the negotiators that three people might be coming out the next day. There was conversation throughout the day about who would be coming out and what would happen to them if they came out. Also that day Schneider told the negotiators that they had heard a radio broadcast about a shooting star called the "guitar nebula," and that Koresh had taken it as a sign. The negotiators felt encouraged that this "sign" could be a face saving action allowing Koresh to surrender peacefully. At Schneider's request, the negotiators read Koresh a newspaper article about the nebula. However, Koresh said it was not the sign he was waiting for.

Digitized by Google

On the morning of March 12 Kathy Schroeder[5] left the compound, expressing a desire to be reunited with her four children who had already been released. Her reunion with her youngest child was filmed and sent back into the compound. She asked to be allowed to call back into the compound in order to give the other members some confidence in the system because they were afraid, not knowing what to expect, and she was allowed to do so. In her interview immediately after her exit Schroeder stated that God had told Koresh not to commit suicide. She also said that there were people inside who wanted to come out, but that Koresh had a "total hold" on them. She said many would come out if Koresh told them to, but he would not.

After Schroeder's exit, Steve Schneider began making many demands, including a copy of the transcript of Kiri Jewell's[6] television appearance, contact with the media, contact with attorneys and a radio personality to serve as the Davidians' press representative. After these demands the negotiators were unable to get through to the compound for five hours. During this time 6 gallons of milk were delivered into

---

5/ Kathy Schroeder was formerly a member of the United States Air Force. Her husband Mike was killed on February 28. Schroeder was featured extensively on the videotapes made by Koresh, where she appeared quite militant and supportive of the Davidians' actions. Schroeder exited the compound during the stand-off along with her four young children. She has pled guilty to armed resistance in federal court.

6/ In a 1992 lawsuit, Kiri Jewell's father gained her custody from Kiri's mother, who lived with Kiri in the compound. Custody was granted based largely upon the evidence of conditions at Mount Carmel.

Digitized by Google

the compound. Schneider finally answered the phone, claimed that there had been mechanical difficulties, and reported that Koresh was very upset about a radio broadcast that his mother had received $75,000 for the movie rights to her story. That evening Oliver Gyarfas exited the compound. Judy Schneider was allowed to speak to a physician on the phone about her injured hand.

After Schroeder and Gyarfas left the compound, the on scene commander decided that power to the compound would be turned off that night. The negotiators advised against cutting off the power that night after two people had come out and more were anticipated to come out. They argued that it would hurt the negotiations effort and would cause them a set back at a crucial time in the negotiations. The justification for cutting the power was that it was going to be a very cold night and maximum effect would be gained in making the Davidians uncomfortable inside the compound. Also, cutting the power was designed to challenge Koresh's control of the situation and to raise the level of stress within the compound to force more departures.

Power to the compound was cut off at 11:00 the night of March 12. Koresh then told the negotiators that people had changed their minds about coming out because of the power shut off. Schneider stated that the power shut off was a "huge, huge set-back," and that he had been considering coming out himself, but had changed his mind because of it. The power remained out that night and the FBI began using the loudspeakers and shining the lights on the compound. It was determined that the

Digitized by Google

negotiators would not call into the compound, but would only answer when they were called. The negotiators were not able to get through to the compound most of the time on March 13.

On March 14 Oliver Gyarfas was allowed to call into the compound. He stated that the authorities were treating him well and that he had access to the press. Kathy Schroeder also spoke to them and said she was treated well and had access to a phone, but she would not speak to the press until they all came out to tell their story. She urged Schneider to come out peacefully and told him that time was not on his side. During the night of March 14 and early morning hours of March 15 additional lights were directed toward the compound.

On March 15 at 5:45 a face-to-face meeting occurred among Waco Sheriff Jack Harwell, negotiator Byron Sage, Steve Schneider and Wayne Martin. The negotiators believed that the meeting had been productive and another face-to-face meeting was scheduled for March 17. On March 16 Schneider demanded a copy of the ATF search warrant, which was ultimately sent in on the 19th. Five audio tapes from relatives were sent in. Schneider then requested that Phil Arnold or another religious scholar be allowed to discuss the Book of Revelations with them. He suggested that if a theologian could convince the people that Koresh was wrong, maybe some 40 to 50 people would come out. The log reflects that Arnold had contacted the FBI early in the stand-off and offered to assist them. A tape of Arnold was later sent into the compound. On March 17 tapes of released members

Digitized by Google

with positive comments about their release were played over the loudspeakers. Busses were brought within view of the compound. The loudspeakers addressed the Davidians telling them the busses were to transport them after their exit. FBI negotiator Byron Sage went out for the planned face-to-face meeting but no one came out.

On March 18 the FBI began bulldozing material around the compound, including a wood pile, a dump truck and some fuel tanks. Koresh came to the phone on March 19, assured the negotiators that he was not going to kill himself and asked them not to destroy any more of the Davidians' property. He stated that a "new moon" was coming and that they would be coming out, but they needed more time. Certain documents requested by the Davidians were sent in that day, including copies of news articles about the stand-off, the ATF search and arrest warrants, a copy of the firearms act, letters from their attorneys and an audio tape of theologian Phil Arnold. At 10:00 that night Brad Branch and Kevin Whitcliffe exited the compound. These two men had been mentioned as people who were leaving the compound on March 12 before the power had been turned off.

On March 19, 1993, Koresh again disavowed any intention to commit suicide.

On March 20 the FBI agreed to turn off the loudspeakers in honor of the Davidians' Sabbath. Schneider told the negotiators the afternoon of the 20th that a lot of people might be coming out. That night Koresh was allowed to speak with

Digitized by Google

Branch and Whitcliffe who had left the compound and to give them a Bible study over the phone. Shortly after midnight Victorine Hollingsworth and Anetta Richard exited the compound.

The next morning, on March 21, Rita Riddle and Gladys Ottman exited the compound. Schneider requested that a female agent search women who left the compound and that request was granted. Later that afternoon Sheila Martin (wife of David Martin) and Ofelia Santoyo came out. Sheila Martin was allowed to call back in and speak with her husband. That night Judy Schneider told the negotiators to give a message to her family telling them to take care of her daughter Maynah because she will be "detained," suggesting that she was planning to come out with her daughter.

That evening the negotiators were informed that the on scene commander had decided to allow clearing of vehicles around the compound. The negotiators opposed this decision, arguing that as on March 12, it would harm the negotiations to have negative actions taken when many people had come out and there was talk of others coming out the next day. The night of March 21 and the early morning hours of March 22 the FBI cleared vehicles around the compound, played loud Tibetan chants on the loudspeakers and used the external floodlights. Schneider complained to the negotiators that the last time people came out the power was cut off and this time they were rewarded with the loud music.

Digitized by Google

On March 22 a letter from SAC Jamar and Sheriff Harwell was delivered into the compound promising the Davidians access to Koresh's teachings while they were in custody and promising them access to the media. The offer was conditioned upon the release of all Davidians by noon of March 23. Koresh reportedly threw the letter away and said he did not believe any of it. Additionally, a letter from the Christian Broadcast Network promising to air an interview with Koresh if he came out was sent in. The loudspeakers and lights were turned on again that night.

On March 22 there was also a meeting between the on scene commander and leaders of the negotiating, tactical and behavioral science elements to assess whether there was any possibility of getting a large number of people out in the near future. The negotiating team submitted a memo which stated that "there is no clear indication that a large number of individuals will depart shortly from the compound." They did state however, that "the long term prospect for a peaceful resolution remains good." They recommended escalating the "stress" within the compound, first by demanding the release of all parties by a certain time, with all vehicles around the compound being removed if the demand was not met. If that tactic did not work, then the memo recommended that non-lethal tear gas be introduced.

The morning of March 23 Livingstone Fagan exited the compound. He was the last Davidian to exit during the standoff. Schneider demanded to speak with Fagan after his release, but Fagan refused to call back into the compound. Schneider told the

Digitized by Google

negotiators that if their "bosses" had not done all of the negative things, such as cutting the power, shining bright lights and playing loud music, twenty people would have been out, but now "you may have to come in and take his carcass out of here."

Over the night from March 23 to 24 Tibetan chants, Christmas music and recordings of the negotiations were played and the lights were on. On the morning of March 24 Schneider informed the negotiators that this day was a Sabbath and they would not negotiate that day. At the daily press briefing on March 24 Koresh was verbally attacked as a liar and a coward who hides behind children.

On the evening of March 24 Louis Alaniz penetrated the outer and inner perimeters and entered the compound. The negotiators asked Schneider to send him out, but Schneider refused.

On March 25 Schneider complained about ATF still being involved and called them a "renegade agency." He also complained about the FBI vehicles running over the children's motorcycles. He complained that bibles were taken from the released persons and about the "broken promise" because Livingstone Fagan did not call back in.

The negotiators began a new tactic on March 25. They demanded the release of 20 people by 4:00. No one was released by the deadline so the FBI cleared motorcycles and go-carts from the grounds. The negotiators then demanded that 10 people be released. There was a discussion of exactly who these people

Digitized by Google

would be. The names Julie Martinez, Cliff Sellars, Clive Doyle, Pablo Cohen, David Thibodeau, Sherry Doyle, David Jones, Scott Sonobe and Livingstone Malcolm were discussed. The negotiators were allowed to speak directly to several members about coming out.

On March 26 the negotiator told Schneider that 10 people must come out by noon. The negotiators' log reflects that Schneider became angry and said that "These people don't care! You can kill us whatever, these people fear God (not you)." The log reflects on March 25 an interview with Lisa Gent, mother of Peter and Nicole, in which she reported that Peter may have known of plans for a mass suicide. On March 26 Dr. Bruce Perry, a psychiatrist from Baylor University who interviewed the released children, reported that he suspected the children may have heard talk about suicide from adults.

As the deadline approached, Schneider reported to the negotiator that he had talked to people but no one wanted to come out. In response the FBI cleared vehicles and trees from around the compound. The negotiators told Schneider that no one would be allowed to come outside the compound. Previously the Davidians had been allowed to come out and feed the chickens. The negotiators were unable to contact the Davidians by telephone from 5:00 the afternoon of the 26th until the next morning, when the Davidians hung a banner out reading that the "tanks broke phone line." On March 26 Jesse Amen penetrated the perimeter and entered the compound, and the negotiators' log reflects an exit

Digitized by Google

interview with a Davidian in which a plan was reported for a mass suicide by explosives on March 2 when Koresh had promised to come out.

At noon on March 27 a box was delivered to the compound containing two blank video tapes, two batteries for the video camera and a letter from Bill Austin, Chaplain at Baylor, stating that Koresh had a Biblical obligation to come out peacefully. After that day's press briefing, Schneider expressed hatred of the ATF and displeasure over the ATF's continued involvement in the daily press conferences. The ATF spokesman had referred to drugs in the compound, which had outraged Schneider. It was also reported in that day's press conference that Kathy Schroeder was going to be charged with conspiracy to commit murder. Previously she had been held only as a material witness.

On March 27 the negotiators renewed their tactic of demanding the release of 10 people by a deadline. The deadline was not met and the FBI bulldozed the front fence. Schneider spent most of that day on the telephone with the negotiators. He told them the property damage did not matter because he was going "beyond this world." Schneider threatened that if the Davidians wanted to kill the FBI agents they could do so and said the FBI could burn the compound down or kill them. He expressed concern that if he came out he would be charged, concern about what would happen to him in jail and fear of the other inmates. He also stated that he knew Koresh would be executed if he came out. He said because Kathy Schroeder was charged with murder, he does not

Digitized by Google

think anyone else will come out. However, Schneider affirmed that he was not going to commit suicide. Schneider asked if he could speak with an FBI chaplain and suggested a face-to-face meeting with his attorney, Jack Zimmerman, Sheriff Harwell and the chaplain from Baylor who had sent in the letter. Schneider told the negotiator that what would work would be to "throw a match to the building, people will have to come out." Koresh had not come to the phone for days, despite repeated requests by the negotiators. Schneider said he was sick.

On March 27, 1993 the negotiator asked Schneider if he was going to commit suicide and he said "Oh, of course not. If I did I'd be lost eternally." On March 28, 1993 Koresh told the negotiator that "if we was going to commit suicide, we'd have been dead a long time ago."

On March 28 the negotiators demanded that 10 people come out by 12:50. The deadline was not met. Koresh finally came to the telephone that afternoon and told the negotiators he knew his life would be over once he went into their hands. He said he knew he would be charged with murder when he came out. He requested six gallons of milk and they were sent in. On that day several people tried to enter the compound but were apprehended.

During the clearing operations on March 28 the adults held children up to the windows. Concern is reflected on the log that they might use the children as shields if fighting broke out. That night Koresh was allowed a privileged telephone

Digitized by Google

conversation with Dick DeGuerin, the attorney his mother hired to represent him. The FBI cleared out the ATF trucks and horse trailers.

The Davidians sent out another videotape on March 28. Dr. Bruce Perry reviewed the tape and reported his opinion that the children were frightened of Koresh and that Koresh was following a deliberate plan of deception and had his own plan for ending the standoff in an apocalyptic way. Dr. Perry expressed the belief that Koresh was stalling for a final battle and wanted law enforcement to go into the compound so he could take some of them with him. This opinion is reflected in the negotiators' log on April 1.

On March 29 attorney DeGuerin was allowed to go to the front door and have a private conversation with Koresh.

On March 30 and 31 two justice department officials, Mark Richard and Jim Reynolds, traveled to Waco. They were briefed by the FBI commanders on scene and viewed the compound. They met with representatives of the U.S. Attorneys' office and the Texas Rangers. On April 1 they returned to Washington and reported to the Attorney General and Associate Attorney General Webster Hubbell on their assessment of the situation. As a result of that trip changes were made in the prosecutive team to improve coordination among the investigative agencies and the prosecutors. On April 2 Ray Jahn, a senior Assistant U.S. Attorney in San Antonio, was designated to head the prosecutive team.

Digitized by Google

On March 30 and 31 attorney DeGuerin was allowed to go into the compound. On April 1 DeGuerin was allowed to go in with attorney Jack Zimmerman, who was hired by Schneider's family. When the attorneys were debriefed on April 1 they reported that Koresh said he would come out after Passover. They said that they advised the members not to speak with law enforcement. There were few conversations between the negotiators and the Davidians during this period. The Davidians refused to allow the attorneys to come in on April 3 because of their Sabbath, but the attorneys went in again on April 4. The attorneys reported after that meeting that they still had no date for Koresh's Passover, but that a plan had been discussed in which Koresh would come out first, followed by the women and children and Schneider would come out last. On April 4 Jesse Amen, an individual who had sneaked in during the stand-off, exited the compound.

On April 6 Schneider informed the negotiators that Passover started at sundown that day and would last 7 days. He later complained of the loudspeakers being on during Passover. Several individuals came out of the compound and into the courtyard several times over the next few days and were "flash-banged" by the FBI.[V]

On April 7 Mark Richard and Jim Reynolds from the Justice Department returned to Waco and held a meeting of the leadership of all of the agencies involved in the Branch Davidian

---

[V] A "flash-bang" is a diversionary device that emits smoke and makes a loud noise in order to stun and confuse the subject at whom it is thrown.

Digitized by Google

matter, including the FBI, the ATF, the Texas Rangers, the U.S. Attorney's office and the Texas Department of Public Safety. They returned from their trip on April 9 and reported to the Attorney General that the FBI had raised the possibility of utilizing tear gas to resolve the standoff at the compound.

On April 9 Schneider was allowed to go out of the compound to light 7 canisters of incense for religious reasons. When he came out he dropped off a letter from Koresh. There was little phone contact over these days, but Schneider did complain that the Bradleys were running over Peter Gent's grave, that the agents were "flipping the finger" at them and that people were being flashbanged.

On April 10 concertina wire was installed around the compound. Schneider informed the negotiators that they never gave the attorneys a specific time when they would come out. He brought a second letter from Koresh out of the compound. On April 12 Schneider requested a copy of a book about the "Koreshians" that he heard about from the negotiators.

On April 12 Department attorneys Jack Keeney, Mark Richard and Jim Reynolds, all managing attorneys in the Criminal Division, received a general briefing from FBI officials of the proposed plan to introduce CS gas into the compound if the Davidians did not come out by the end of Passover. Later that same day a briefing was held at the FBI Command Center for the Attorney General and the Associate Attorney General on the proposed plan. The plan was presented not as an all out assault,

Digitized by Google

but as a tactic whereby gas would be inserted in stages, initially into only one small area of the compound. The goal was to allow exit through uncontaminated portions of the compound. The Attorney General requested that she be provided with more information on the effects of CS gas on pregnant women and children, a military second opinion on the plan and information on whether it would be possible to cut off the water supply to the compound.

On April 13 Koresh refused to speak with attorney DeGuerin, but Schneider spoke with him for a while. Schneider advised that this was the last day of Passover. Koresh agreed to speak with the attorneys on the phone on April 14 and at that time advised them that he only intended to leave the compound when he finished a manuscript on the Seven Seals referred to in the Book of Revelations. Koresh estimated it would take him 14 days. Koresh came on the phone unexpectedly at midday and preached to the negotiators for five hours nonstop. Several banners were displayed that day reading "Read Proverbs 1,2,3,4. We Come to Love, Not War", "Let's Have A Beer When This Is Over", "My Name Is Vega I'm From Hawaii", "Media and FBI Don't Know the Truth. You Can't Accept the Truth. We Can Still Have a Few Beers Together", "I'm an American, I Love America, But BATF Killed My Family and Friends."

On April 14 another meeting was held in the FBI Director's office in which the Attorney General and Associate Attorney General were briefed on military and medical aspects of

Digitized by Google

the proposed plan. United States military commanders were present and evaluated the plan from a military perspective. They reported that rather than a stop and start insertion of the gas, they would go in full force and gas the whole compound at once. They also reported their opinion that the HRT had to be pulled out soon because they had been on full alert too long. A medical doctor reported to the Attorney General on studies of the effects of CS gas on children, pregnant women and the elderly. The Attorney General directed that a detailed statement of the plan with supporting documentation be put together. On April 16 Schneider reported that Koresh was writing the second seal, but that Schneider had not edited the first seal yet. On April 17 Louis Alaniz, one of the persons who had entered during the stand-off, exited the compound.

On the afternoon of Saturday, April 17 the Attorney General gave final approval to the plan to gas the compound on Monday, April 19, 1993. She advised the President of her decision on Sunday, April 18.

On April 18 the remaining vehicles were cleared from in front of the compound, including Koresh's prized automobile. Koresh became very upset about his car. Milk was delivered into the compound on the 18th along with typewriter equipment.

At approximately 6:00 a.m. on April 19 the gassing operation began. Negotiator Byron Sage telephoned the compound and notified Steve Schneider that the FBI would be inserting tear gas, but that it was not a lethal assault and they should all

Digitized by Google

come out peacefully. Schneider responded by ripping out the phone and throwing it out the door. Sage continued to announce over the loudspeaker that this was not a lethal assault and to instruct the people on how to exit and receive medical care. The Davidians fired on the vehicles as they approached the compound.

At noon, fire erupted from three separate areas of the compound. The fire spread quickly, but the openings in the building appeared to provide a means of escape. Only nine Davidians survived the fire. They were Renos Avraam, Jamie Castillo, Graeme Craddock, Clive Doyle, Misty Ferguson, Derek Lovelock, Ruth Ottman Riddle, David Thibodeau and Marjorie Thomas.

A total of 35 people left the compound during the stand-off. Twenty-one children were released from the compound beginning on February 28, 1993, but no children were released after March 5, 1993. Thus, all of the children were released in the first 6 days of the 51-day stand-off. A total of 14 adults exited the compound during the standoff. Two adults entered the compound during the stand-off. Both exited before April 19. No Davidian members exited the compound after March 23, 1993 until April 19.

After the fire an independent arson investigation determined that the fire had been started deliberately by persons inside the compound. The medical examiner found the remains of seventy five individuals in the debris. Thirteen adult bodies had fatal gunshot wounds. Most of these wounds were gunshot

Digitized by Google

wounds to the head. Several adults died of gunshot wounds to the chest and face. Two adults were fatally shot in the back. Three young children were shot to death and one three year old boy was fatally stabbed in the chest. Two other minors suffered fatal blows to the head. Koresh died of a gunshot to the mid-forehead. Schneider died of a gunshot wound of the mouth. The bodies of Koresh and Schneider were found in the communication room of the compound.

EVALUATION

A. COULD THE FBI HAVE PREVENTED THE DEATHS OF THE BRANCH DAVIDIANS?

1. The Fire

An examination of the burned ruins of the compound by independent arson experts concluded that the fire was deliberately set from within the compound. It is not clear whether the decision to set the fire was a unanimous decision of the entire group, or whether some people were held hostage or were shot to prevent their escape from the fire. A number of children were shot to death.

The Arson Report states:

> This fire was caused by the intentional act(s) of a person or persons inside the compound. Fires were set in three separate areas of the structure identified as points of origin 1, 2 and 3. This investigation establishes that these fires occurred in areas significantly distant from each other and in a time frame that precludes any assumption of a single ignition source or accidental cause. . . . Investigative findings

Digitized by Google

> further confirm that flammable liquids were used to accelerate the spread and intensity of the fire.

The Arson Report notes that in addition to the multiple origin points and flammable accelerants, the spread of the fire was enhanced because the compound was constructed with no consideration for fire safety, the strong wind from the south intensified the spread and the building contained highly combustible materials, such as baled hay.

There is also evidence from the Davidians who survived the fire suggesting that the fire was deliberately set. In a statement given to the Texas Rangers on April 20, 1993 a Davidian stated that the fire was started with Coleman fuel which had been distributed throughout the compound in specific locations. Another surviving Davidian was interviewed by the Texas Rangers on April 19, 1993 and stated that he was in the chapel with several other people when the armored vehicle drove through the front door and he heard the word passed to "start the fires" or "light the fire," and heard someone else say "make sure." Agent Lloyd Sigler, who spoke with him immediately upon his exit from the compound, reported him saying that Koresh had previously spoken of burning the compound if confronted by police. In a May 7 interview that same Davidian confirmed hearing a conversation about lighting a fire and stated that he thought there was some plan to burn the building and that he recalled seeing someone

Digitized by Google

deliberately splashing, pouring or dousing the Chapel area with lantern fuel.[8/]

(9/)

REDACTED FROM PUBLIC REPORT PENDING RELEASE OF IMPOUNDED MATERIAL.

8/ However, another Davidian who survived the April 19 fire stated that when the fire broke out he heard someone yell "They've started the fire, they're trying to burn us out, we're just going to stay here and we don't care," but he decided not to stay because he thought the fire would be too painful.

9/

Digitized by Google

REDACTED FROM PUBLIC REPORT PENDING RELEASE OF IMPOUNDED MATERIAL.

The infra red film taken from an airplane at the time the fire started shows intense spots of heat erupting in different spots in the compound at almost the same time. These locations were too far removed from each other to have been ignited by the same source. In addition, many of the HRT personnel who were within sight of the compound when the fire

Digitized by Google

started report that they saw flames erupt almost simultaneously in different locations in the compound.

The Arson Report concludes that the fire was started by persons inside the compound and not by the activities of the FBI vehicles. "We are of the opinion that these [tear gassing] operations did not contribute to the ignition or spread of the fire." The report does not rule out the possibility that the spread of the fire could have been enhanced by spillage of flammables caused by the FBI breaching activities. However, given the significant evidence that the Davidians were deliberately spreading fuel around the compound, there is no reason to believe that any such spillage would have been a primary factor in the spread of the fire. The Arson Report also states that the law enforcement breaching operation opened holes in the compound that allowed the wind into the compound, possibly enhancing spreading, but it recognizes that at the same time the fresh air may have also given people more time to escape before they were overcome with fumes from the burning compound.

2. Mass Suicide or Mass Murder?

The medical examiner has determined that Koresh, Schneider and a number of other individuals who died in the compound on April 19, did not die from the fire, but died from gunshot wounds. It is not known whether these individuals committed suicide or were shot by others.

Digitized by Google

Former Davidian Dana Okimoto reported to authorities in an interview on May 27, 1993, after the fire, that Koresh's biggest fear was that someone would take his wives away and that he felt that rather than letting someone take his wife, the wife should kill herself and if she could not do so one of the "mighty men"[10] should do it, since this was one of their duties. Therefore, if people were shot within the compound it may have been in accordance with the above plan. It is also possible that some people were shot to prevent their escape from the compound. We may never know what really happened.[11]

3. **FBI Restraint**

The stand-off with the Davidians presented a significant danger to the FBI personnel who were stationed within range of the compound's weaponry. Investigation by the ATF revealed that by February 28, 1993 Koresh and his associates had at least 243 total firearms, including two 50 caliber semi-

---

10/ Koresh's "mighty men" were his inner circle responsible for enforcing discipline within the compound. The core of this group had been in the shoot-out with George Roden in 1987 and had been acquitted by a local jury. The term "mighty men" comes from the Bible.

11/ The Arson Report observes that:

> A great many of the occupants could have escaped to the outside of the compound even as the building burned. An exact number cannot be determined. However, considering the observable means of exit available, we must assume that many of the occupants were either denied escape from within or refused to leave until escape was not an option.

Digitized by Google

automatic rifles, numerous assault rifles, shotguns, revolvers and pistols. The Davidians also purchased hundreds of grenades and 39 "full auto sears" devices used to convert semi-automatic weapons into automatic weapons. On February 28 shots were fired from over forty different positions within the compound. The Davidians were trained in the use of these weapons. Moreover, there was concern that the Davidians had dug tunnels fanning out from the compound and planned to place explosives in the tunnels under FBI positions.

There is no evidence of any shots being fired at the compound by law enforcement officers after the cease fire on February 28, 1993.[12/] We have reviewed the statements of the agents who participated in the tear gas assault on April 19, 1993 and none of them claim to have fired their weapons on April 19. SAC Jamar and ASAC Rogers both state that the FBI did not fire on the compound that day. However, rounds were being fired from the compound at the FBI on April 19th. Also, agents reported hearing gunfire within the compound.

The FBI demonstrated admirable restraint in not firing back on April 19 and thereby avoided being provoked into a gun battle with the Davidians. Outside agencies present on April 19

12/ HRT members threw diversionary "flash-bangs" at some Davidians who came outside the compound after the Davidians had been told not to do so near the end of the stand-off. Although flash-bangs make a loud noise which might be mistaken for a gunshot, they are non-lethal devices only intended to stun and confuse the target.

Digitized by Google

praised the FBI's professionalism in their execution of the gas assault.

4. Contingency Planning

The risk of a mass suicide was considered as a possibility during the planning and approval of the final assault. For example, cyanide poisoning was thought to be a major risk and therefore cyanide antidote kits were available on the scene along with an emergency medical facility. The Attorney General asked about the possibility of a mass suicide.

The evidence of a possible intention to commit mass suicide was contradictory. In a memo dated March 8 FBI behavioral scientists reported:

> KORESH always talks about the "end", suggesting to his followers that "it is closer than you think". If KORESH dies before his followers, the women are to kill themselves and the children. If the women are unable, the men are to help them. KORESH teaches his followers that they must follow him to the "end", even if that means killing themselves. . . . KORESH realizes that in an environment outside of the compound, without his control over the followers, he would lose his status as the Messiah, thus a mass suicide ordered by KORESH cannot be discounted. His order for a mass suicide would be his effort to maintain the ultimate control over his group, in the event of his death.

(emphasis added). Expert Park Dietz reported that he informed SAC Ricks that Koresh was suicidal and may have made a suicide pact with other members.

Former members and released members also warned of the possibility of suicide. On March 3, 1993 the FBI interviewed

Digitized by Google

Kiri Jewell, a young teenager who lived in the compound with her mother until shortly before the stand-off. Kiri reported that the Davidians had discussed mass suicide by cyanide and shooting themselves. She reported that she believed the mass suicide would occur on a Friday at 1:00 because that is when Koresh believes Jesus died.

A Davidian who left the compound in mid-March was interviewed in the hospital by Texas Rangers four times from March 24 to March 27 and reported that the Davidians had planned a mass suicide on March 2, 1993, when Koresh had promised to come out of the compound with all his followers. Koresh planned to exit the compound with Greg Summers, who would have an explosive device strapped around his waist so that they would blow themselves up in front of the FBI. In addition, the people inside the compound planned to blow themselves up so that "We would all go to heaven that day".

The Davidian also reported telling Margarida Vaega that he preferred to go to sleep and Vaega responding that she had an injection that would put him to sleep before the explosion. The Davidian reported that the plan was not implemented because God told Koresh to wait since God had more work for Koresh to do. Vaega pinned a note to her daughter's coat in which she said that the adults would die after the children were released. The note was intended for Vaega's sister.

The psychiatrists who interviewed the released children reported that the children may have heard discussions of suicide

Digitized by Google

and that some children believed they would never see their parents again in this life.

However, in interviews with the ATF before March 15, 1993 former Davidians Mark Breault, Dana Okimoto, Jeanine Bunds and Robyn Bunds reported that Koresh's teaching was that law enforcement officers have to be the vehicle for his death in order for his prophesy to come true and that he cannot kill himself to fulfill his prophesy. Mark Breault, a former Davidian, told that Koresh taught that the United States government is out to crucify him and that his group would be killed but they would rise again. Karen Doyle, a follower of Koresh who lived outside the compound, reported in an interview during the stand-off that Koresh prophesied his own martyrdom and that of the group. She stated that to be "exalted" one had to die with Koresh and stated that she wished she were there at the compound.

Because suicide was seen as a possibility all along, the negotiators frequently asked Koresh and his followers whether they were going to commit suicide and they were always reassured that this was against Koresh's teachings.[13/] An agent who

---

13/ On March 8, 1993 Koresh stated "I'm not going to commit suicide." On March 1, 1993 the negotiator asked Koresh if he was going to commit suicide and he replied "I'm not going to commit suicide." On March 1, 1993 the negotiator informed Koresh that "Our concern is that you're not going to come out and that you might commit suicide." Koresh replied, "Oh, look, if I wanted to commit suicide, I would have done it already." On March 2, 1993 Koresh stated "I don't think anyone's going to commit suicide." On March 1, 1993 the negotiator asked Koresh "Are you going to let any

(continued...)

Digitized by Google

interviewed some of the individuals who left the compound reported that none of them indicated that suicide was a potential possibility and in fact indicated that such an act would be against their religion.

B. WAS THE FBI'S NEGOTIATION STRATEGY AND ITS IMPLEMENTATION ADEQUATE TO RESOLVE THE CONFRONTATION WITH THE BRANCH DAVIDIANS?

1. The Negotiation Strategy

The first briefing book presented to the Attorney General states that the strategy was to "secure the surrender and arrest of all adult occupants of the compound while providing the maximum possible security for the children within the compound." (Tab B, p. 4). The negotiators knew they were faced with religious group fanatically devoted to Koresh and his teachings. It was not certain, however, whether Koresh truly believed his own religious message or whether he was exploiting his control over his followers for personal gain.

13/(...continued)
of your other people kill themselves or die in there?" Koresh replied "I'm not going to do that." On Tape #128 in a conversation with Sheriff Harwell Koresh stated "if we have to die for what we stand for, we're going to. We're not going to commit suicide." On March 19, 1993 in discussing when he will be "going home," meaning death, Koresh said "not suicide." On March 27, 1993 the negotiator asked Schneider if he was going to commit suicide and he says "Oh, of course not. If I did I'd be lost eternally." On March 28, 1993 Koresh told the negotiator that "if we was going to commit suicide, we'd have been dead a long time ago."

Digitized by Google

Initially the FBI tried to work within the framework of the Davidians' beliefs to convince Koresh the standoff was not the apocalyptic event he had prophesied. Evidently Koresh was the only "expert" in his branch of Branch Davidianism, and so even with advice from religious scholars, the FBI was unable to influence Koresh's unique interpretation of scripture. The frustration of working within Koresh's religious framework became apparent when on March 2, after promising to leave the compound, Koresh said that God had told him to wait. Koresh was improvising his own theology and was completely beyond the influence of religious arguments or religious scholars.

Koresh knew that he and other Davidians would be arrested and charged with murder of the ATF agents. Koresh and others in the compound were acutely aware of the secular consequences of their acts. Texas has the death penalty by lethal injection. At one point in the negotiations Koresh joked, "When they give me the lethal injection, give me the cheap stuff, huh?". Efforts were aimed at convincing Koresh that if he and the others exited the compound they would be treated well and that they might "beat the rap." Needless to say this tactic was not popular since it implicitly criticized ATF and could be viewed as disparaging of the four dead ATF agents. However, the tactic was completely proper in the context of negotiating a nonviolent end to the standoff.[14/]

14/ Koresh and a number of his followers had avoided convictions for attempted murder in a 1987 shootout with George Roden, (continued...)

Digitized by Google

In the face of Koresh's intransigence the final negotiating strategy was developed called the "trickle, flow, gush" strategy. The objective was to undermine the devotion of individual members to Koresh. The FBI began speaking to the other members on the phone, playing tapes of the negotiations and the statements of released members and family members back into the compound over loud speakers, sending videotapes and pictures of the released children into the compound and sending in messages from family members. For example, a taped passage from the negotiations in which Special Agent Byron Sage outwitted Koresh was played over the loudspeakers for this purpose. The objective was to move the pace of the exodus from the compound from a trickle to a flow to a mass desertion of Koresh by his followers.

Although others left the compound, this strategy also failed. The number of people leaving the compound slowed rather than accelerated and the exit of members from the compound stopped altogether after March 23rd, nearly a month before the final assault. There is evidence that Koresh was purging his group and therefore these departures from the compound did not represent defections from Koresh's ranks. Many of the adults leaving the compound appeared to remain loyal to Koresh.

14/(...continued)
the previous leader of the compound. Sheriff Jack Harwell was involved in the Roden case. Koresh spoke very highly of Harwell and the FBI involved Harwell in the negotiations.

Digitized by Google

Koresh broke his promises to leave the compound, and the pace of the releases did not significantly increase. Koresh had promised to come out on March 2nd if the government played his tape. The government complied and Koresh reneged. Koresh said he was waiting for a sign from God. On March 12 he considered the guitar nebula as a possible sign, but decided it was not the sign he was waiting for. Koresh told his lawyers he would come out after Passover, but when Passover ended, Koresh said he had not committed to a specific date to come out.[15] Koresh continued to make excuses to stay in the compound thus reinforcing the view that he was not devout, only manipulative.[16]

Dr. Park Dietz, a Clinical Professor of Psychiatry and Behavioral Sciences at the University of California, was consulted by the FBI. Dr. Dietz is under contract with the FBI as a forensic psychiatrist. The FBI flew Dr. Dietz to Mt. Carmel to give his assessment of Koresh. March 2nd Dr. Dietz expressed the opinion that Koresh would not voluntarily leave the

---

15/ Some in the FBI may have felt that Koresh also broke promises on March 12 and March 21, when there was discussion about people coming out but they did not. However, it is not clear that in the context of the negotiating posture these discussions actually rose to the level of promises.

16/ Indeed, the "negotiations" are characterized as "communicating" with Koresh or "talking" to Koresh because the Davidian situation lacked so many of the elements typically present in hostage barricade situations. Koresh made no threats, set no deadlines and made no demands. Koresh and his followers were at Mount Carmel where they wanted to be and living under conditions that were only marginally more severe than they were accustomed to.

Digitized by Google

compound. He considered Koresh to be suicidal and stated that Koresh might have made a suicide pact with his followers. Dr. Dietz described Koresh's personality as manipulative.

Dr. Dietz made a number of recommendations based on his review of documents and the negotiations up to that point. He recommended that the FBI distance itself from ATF and express sympathy with Koresh's anti-BATF views. Dr. Dietz expressed the opinion that Koresh would choose death over losing power, and therefore the negotiation strategy should create the illusion that Koresh would not go to prison but would emerge with more followers than he had before.

2. Pressure Tactics

Conflicts were reported between the negotiators and the tactical elements regarding the strategy to be used with the Davidians.[17] On several occasions tactical pressure was exerted on the Davidians either without consulting the negotiators or over the negotiators' objections. The negotiators

---

[17] In addition to the negotiators reporting these conflicts, an ATF representative assigned to work in the FBI command post also observed that the negotiators and the FBI tactical people had growing disagreements and tension. In addition the FBI special agent assigned as the liaison for communications between the negotiation team and the HRT advised that he felt that "an adversarial relationship had developed" between the negotiating and tactical components and that this was divisive and unnecessary. He attributed the problem to a basic lack of understanding and appreciation for the overall mission and strategy. In addition, negotiators from the Austin Police Department who were assigned to the negotiation team also noted the conflict with the tactical teams.

Digitized by Google

believed the timing of these tactical activities disrupted the progress of the negotiations unnecessarily. Additionally, negotiators complained that the HRT engaged in tactical maneuvers before the negotiators had an opportunity to use the maneuvers to further the bargaining process.

At the outset of the crisis FBI behavioral scientists recommended against confronting David Koresh. The negotiators specifically recommended that the Bradley vehicles should not be brought up to the compound. Despite the negotiators' advice, the Bradleys were run up and down in front of the compound in what negotiators believed was a show of force.

On March 12 after two Davidians had exited the compound the decision was made to turn off the electricity in the compound. The negotiators objected to the decision arguing that the Davidians should be rewarded for releasing two people. The power was turned off. No one was released for the next seven days.

On March 21 after seven Davidians had exited the compound the negotiators were advised that the Davidian vehicles would be cleared from the left side of the compound. The negotiators opposed this action, pointing out that once again the FBI would be answering a positive move on the part of the Branch Davidians by a negative action. Nonetheless, the bulldozing plan was implemented. The negotiators received conflicting justifications for the action being told both that the items were being moved as a safety measure and to harass the Davidians.

Digitized by Google

Loudspeakers were initially used to provide information to Koresh's followers still inside the compound, but contrary to the negotiators' advice the loudspeakers were used to broadcast Tibetan chants, other annoying music and the sounds of dying rabbits. The negotiators objected to playing music as a harassment tactic, advising that such "psychological warfare" would only make the FBI look bad.

Some negotiators believe that as a result of these actions the Davidians concluded that the negotiators had no influence over the decision makers and that the FBI was not trustworthy. Several negotiators and behavioral scientists expressed the opinion that although David Koresh and his core followers may never have come out through negotiation, more people might have exited the compound voluntarily during the stand-off if the negotiation strategy had been followed more rigorously.

The negotiators recognized that a traditional negotiation tactic is to put pressure on the subject at times through tactical activities choreographed with a more gentle negotiating approach. However, a memorandum dated March 5, 1993 from FBI behavioral scientists stated that "[i]n traditional hostage situations, a strategy which has been successful has been negotiations coupled with ever increasing tactical presence. In this situation however, it is believed this strategy, <u>if carried to excess</u>, could eventually be counter productive and could result in loss of life." (emphasis added)

Digitized by Google

Despite these conflicts, I am not confident that more members would have left the compound if the negotiating strategy had been followed more rigorously. Even though in hindsight the behavioral assessment of Koresh proved extremely accurate, the most compelling evidence of the resolve of the Davidians to follow Koresh was their willingness to take their own lives and the lives of their children in obedience to Koresh. It is this total allegiance to Koresh that was unpredictable. Even those who left the compound before the fire seemed to remain committed to him. Several expressed regret that they could not join him in death. Koresh could not be pressured into leaving the compound, and whatever bound Koresh and his followers was apparently stronger than either force or reason.

3. Communications Between The Negotiating And Tactical Elements

The negotiators and tactical team had regular access to the SACs on scene and frequently spoke to them on a one to one basis. However, some negotiators believe that joint strategy meetings of tactical, negotiating, and command elements were held too infrequently. According to negotiators the first joint strategy meeting was held on March 22. The negotiators were miles away from the forward command post and rarely came into direct contact with the tactical commanders.

One of the Technically Trained Agents ("TTA's") charged with providing technical support reported that there were communications problems in the command post and that it seemed

Digitized by Google

one component did not know what the other was doing. He reported feeling as the service contingent for the other components the TTA's were often "in the middle," receiving conflicting instructions or inquiries.

The negotiators reported that they were not satisfied with the quality of the information flowing from the tactical components to the negotiators. The negotiators complained that the tactical representative in the command center did not use the RAPID START system, but generally reported information orally and the negotiators rarely received any written intelligence information generated by the tactical teams unless they actively sought it out.

Likewise, the tactical units in the forward positions complained about the lack of information about the negotiations, although they believed that the quality of information they were sending up from the field was very good. Some of the negotiators realized during the stand-off that their information was not getting out of the command post and making it to the tactical troops, even though the negotiators all agreed that the information flow out of the negotiation cell was excellent. HRT members complained of being "starved for information".

Digitized by Google

4. The Role Of FBI Behavioral Experts

For the stand-off in Waco the FBI called upon the services of the Criminal Investigative Analysis Subunit, which falls under the Investigative Support Unit of the FBI's NCAVC. The special agents in this subunit offer assistance such as personality assessments of known individuals, suggestions as to strategy and on-site assistance with major violent crimes.

In addition to FBI experts, outside experts were consulted by the FBI during the Waco stand-off. These experts specialized in the fields of psychology and psychiatry and provided behavioral assessments of Koresh and his followers. Park Elliot Dietz, Clinical Professor of Psychiatry and Biobehavioral Sciences from the University of California School of Medicine and a civilian consultant to the FBI, provided assistance evaluating Koresh. Bruce D. Perry, Chief of Psychiatry of the Baylor College, worked with the released children and provided some assessments of Koresh's likely actions based on that work. Psychiatrist Joseph Krofcheck and Psycholinguist Murray Miron assisted in analyzing Koresh's letters which were sent out at the end of the stand-off.

The behavioral experts were provided access to all of the material gathered by the ATF regarding Koresh and the Davidians, including interviews of former members and records of prior criminal proceedings. In addition the behavioral scientists listened to the ongoing negotiations and spoke with those who interviewed the released children. The behavioral

Digitized by Google

scientists expressed no dissatisfaction with the quantity and quality of information with which they were presented. Indeed, one of them remarked that even though the ATF had not gathered this information for the purposes of creating a psychological profile, they had all the information that was necessary.

The chronology of the written advice from the behavioral scientists is as follows: On March 3, 1993 the behavioral experts wrote a joint memo recommending a strategy of trying to work within the Davidians own belief system to talk them out. They recommended acknowledging the conspiracy against the Davidians and their right to defend themselves, and creating an illusion that Koresh could win in court and in the press and would not go to jail. On March 5 behavioral experts wrote a memo advising that the negotiation strategy focus on insuring the safety of the children and facilitating the peaceful surrender of the Davidians. This memo recommended a de-escalation of tactical pressure because movement of tactical personnel would validate Koresh's prophesy that his followers must die defending their faith. As an alternative tactic, the memo recommends that efforts be made to drive a wedge between Koresh and his followers by convincing them that a battle is not inevitable.

They recommended continuing efforts to establish a wedge between Koresh and his followers using outside family members and released children to appeal to the parents, gaining direct intelligence about activities inside the compound and

Digitized by Google

giving Koresh's followers the opportunity to safely break and run.

A memo of March 7, 1993 lists certain tactical activities that might be used to "increase the stress and anxiety" inside the compound, including many of the things that ultimately were done, such as floodlights, noises, loudspeakers, movement of military vehicles, shutting off utilities, fencing off the compound and discrediting Koresh at press conferences. However, the memo also cautions against tactical options which would shut down the negotiations, because then the only option would be physical action with the Davidians fighting to the death and tremendous loss of life. The memo recommended continued negotiation with the use of Sheriff Harwell as a third party intermediary.

A March 8, 1993 memo sets forth a psychological profile of Koresh. The memo points out that Koresh shows signs of being a religious fanatic with delusions. The memo speculates that Koresh may have ambushed the ATF agents on February 28 "to set into motion a chain of events which will verify, to his followers, that his interpretation of the scriptures . . . is correct." The memo acknowledges that "[i]t has been speculated that KORESH'S religious beliefs are nothing more than a con, in order to get power, money, women, etc., and that a strong show of force (tanks, APC's weapons, etc.) will crumble that resolve, causing him to surrender." In fact, the memo warns, the opposite may well occur and Koresh and his followers will draw closer

Digitized by Google

together. The March 8 memo also recognizes that "[t]he strong show of force response is to be expected from law enforcement personnel, who are action oriented," but that Koresh may be trying to provoke a confrontation where the FBI unintentionally makes his prophesy come true. The memo warns that Koresh's teachings have been that his followers must follow him in death, even if that means killing themselves and that Koresh might order a mass suicide rather than lose his status as Messiah. The memo advises doing the opposite of what one would do in traditional hostage negotiations with a psychopath (i.e. wresting control), but rather moving back would be taking power from Koresh. It concludes "[t]he bottom line is that we can always resort to tactical pressure, but it should be the absolute last option."

A memo dated March 9, 1993, recommends that efforts should be made to break Koresh's spirit because his psychopathic tendencies to control and manipulate have caused the negotiations to meet with limited success. The memo recommends "non-offensive" actions, such as sporadic termination and reinstating of utilities, unpredictable movement of manpower and equipment, downplaying Koresh in press conferences, jamming radio and television and denying negotiations to demonstrate that Koresh is no longer in charge and to buy time. A March 7 memo from headquarters suggests that small failures will cause the followers to question Koresh. At this point the behavioral science memos ceased.

Digitized by Google

On April 9 and 10 Koresh sent out two letters which were analyzed by psycholinguist Murray S. Miron and psychiatrist Joseph Krofcheck, working with FBI agent Clinton Van Zandt. Miron assessed Koresh from the first letter as exhibiting a "rampant, morbidly virulent paranoia" and "dissociative pathology which makes him oblivious to either reality or rationality." Miron sees the letter as a "delusional communication" implying that Koresh is preparing to do battle against his adversaries, that he is in a mindset of aggressiveness and may have provided for "snares" against an assault on the compound. Krofcheck analyzes the same letter as showing Koresh to be a "functional, paranoid type personality" and a "charismatic, manipulative person with a core delusional system that sees himself as his own form of the trinity consisting of God, Jesus Christ and David Koresh, the prophet through whom God speaks." He believes Koresh is exercising self-deception and that he has no real intention to comply with any demands. Koresh is seen as a user of others who does not value his people as equals or human beings. He plans to catch the FBI unaware, which could include destruction by fire or explosion. "He may be prepared to do whatever he has to do to fulfill his ultimate game plan." "He is willing to kill, to see his followers die and to die himself." "Koresh's clock is running and he is fully capable of creating the circumstances to bring this matter to 'a magnificent' end in his mind, a conclusion that could take the lives of all of his followers and as many of the authorities as possible." Krofcheck believes

Digitized by Google

Koresh will not come out voluntarily and "the government is the hostage." Krofcheck concludes that "we have no clear ability to influence the exit of him and his followers from their compound short of tactical intervention."

Finally, on April 17, just before the final assault plan was approved, Park Dietz was asked to give his views on the status of the negotiations and prognosis for a successful conclusion. In a memo dated April 17 Dietz opined that negotiating in good faith would not resolve the situation as it now stands. However, he believed the negotiations did not succeed because of the ATF's continued involvement in the case and the fact that negotiation strategies were "repeatedly undermined by ancillary actions." Dietz stated that Koresh would not come out or send out substantial numbers of his followers and that conditions inside the compound would continue to deteriorate.

From these memos it appears that the behavioral scientists did not simply apply a one dimensional diagnosis of anti-social personality, but took seriously the possibility that Koresh was also a delusional person willing to die and see his followers die according to his teachings.

5. _____

Digitized by Google

Digitized by Google

REDACTED FROM PUBLIC REPORT PENDING RELEASE OF IMPOUNDED MATERIAL.

Digitized by Google

Digitized by Google

REDACTED FROM PUBLIC REPORT PENDING RELEASE OF IMPOUNDED MATERIAL.

C. WAS THE DECISION MAKING PROCESS FOR FORMULATION, APPROVAL AND IMPLEMENTATION OF THE PLAN FOR THE TEAR GAS INSERTION ADEQUATE?

1. The Briefing Of The Attorney General

After reviewing the facts and personally interviewing Attorney General Janet Reno and Associate Attorney General Webster Hubbell, I conclude that the Attorney General was adequately briefed on the tear gassing plan by the FBI. She considered all viable options and realistically considered the risks. The Attorney General and other Department officials asked appropriate questions and explored other options independent of the FBI briefing. At the Department's initiative, the Attorney General received a personal briefing from United States military commanders evaluating the plan. She also independently consulted medical experts on the effects of CS gas. Associate Attorney General Hubbell telephoned FBI Special Agent Byron Sage, one of the negotiation team leaders, and spoke with him extensively in order to get an opinion directly from the negotiators as to whether continued negotiation would be fruitful.

The Attorney General was sworn into office on March 12, 1993. Before her confirmation she received a general briefing on

Digitized by Google

the Waco incident from Acting Attorney General Stuart Gerson. The President had already been advised of the status at Waco, had indicated that he preferred a negotiated solution, if possible, and asked to be informed if it appeared force would be necessary. The Attorney General had her first detailed meeting about Waco the week of March 12. She asked to be informed when and if there were any indications that the use of force might become necessary and requested periodic briefings.

The week of April 9 the Director of the FBI told the Attorney General that the FBI would be coming to her with a proposal to use tear gas to resolve the stand-off at Waco. On April 12, 1993 the Attorney General received the first detailed briefing on the tear gas plan from FBI representatives at FBI headquarters in Washington. The Associate Attorney General and other Department personnel were present. Immediately afterward the Attorney General and the Associate Attorney General met with others from the Department to discuss the proposal. The Attorney General expressed concern about the effects of the CS gas on the children and pregnant women in the compound. It was determined that a second opinion should be obtained from the military on the viability of the plan and more information should be gathered on the effects of CS gas.

On April 14, 1993 another meeting was held at FBI headquarters. Military commanders provided their assessment of the plan. The results of studies of the effects of CS gas, including the effects on children, pregnant women and the elderly

Digitized by Google

were discussed. During the meeting it was noted that American soldiers are exposed to CS gas as part of their routine training. Also, concerns were raised by the military about fatigue due to the extraordinary duration of the stand-off.

The Attorney General was briefed on the alternatives to gassing, such as fencing in the compound. This option was not recommended because of the firearms in the compound. The FBI estimated that the Davidians had a year's supply of food and water. Thus if the FBI continued to wait, they were looking at possibly one year of negotiation during which time they could not protect against disaster, such as a gun battle, an explosion or people breaking into the compound. Additionally, if food or water began to run out or hygienic conditions deteriorated, they might walk in after a year and find a lot of people dead.

On April 15 Associate Attorney General Hubbell had a long telephone conversation with FBI negotiator Byron Sage in order to find out directly from the negotiators whether they agreed that it was time to go in with tear gas. Hubbell became convinced and reported to the Attorney General that the negotiators believed there was no further hope of getting them out through negotiation.

On Friday April 16 the Attorney General joined a meeting of the Associate Attorney General and the FBI Director in which the status of the decision was being discussed. She asked that by Saturday afternoon a statement be prepared documenting

Digitized by Google

the situation inside the compound, the progress of the negotiations and the merits of the proposal.

On Saturday, April 17 the Attorney General was given a written summary with supporting documentation. On Saturday afternoon the Attorney General approved the plan to use the gas. On Sunday, April 18 the Attorney General informed the President that she had approved the plan.

The Attorney General believes she was adequately informed. She believes the FBI was very forthcoming. Associate Attorney General Hubbell believes he was fully briefed. The Attorney General and Associate Attorney General were not aware of any dissents from the plan. On Monday morning, April 19, the tear gas plan was implemented.

2. **Execution Of The Gassing Plan**

The gassing operation was initiated in the early morning hours of April 19. Special Agent Byron Sage initiated telephone contact with the compound, warned them of the imminent tear gas insertion and reassured them that it was not a lethal assault. Similar messages were broadcast over the loudspeakers throughout the morning, urging the Davidians to come out and assuring them of their safety. At approximately 6:00 a.m. the HRT was notified that the warning call had been made and the first Command Engineering Vehicle (CEV-1) began inserting gas. Gas was inserted through windows in the compound from a boom attached to CEV-1 by means of a Mark V System, which is a liquid

Digitized by Google

tear gas dispenser which will shoot a stream of liquid tear gas approximately 50 feet for a duration of approximately 15 seconds.

Shortly after the insertion began, the HRT commander was advised that his people were under fire from within the compound. In accordance with the approved plan, tear gas was inserted into all windows of the compound through the Mark V's in the two CEV's as well as by ferret rounds launched from the Bradley vehicles. Ferret's are non-burning tear gas rounds designed for 40 mm grenade launchers. The CEV's then reloaded and made a second complete insertion of tear gas.

Sometime in mid-morning an apparent deviation from the approved plan began. The plan had contemplated that the building would only be dismantled if after 48 hours not all the people had come out. However, the CEV's began knocking holes into the compound the morning of the assault. First, CEV-1 was ordered to enlarge certain openings to provide for an easier escape route for the Davidians. CEV-2 broke down and the team of that vehicle obtained another CEV which was not equipped for tear gas. This CEV was ordered to clear a path through the compound in order to clear a path to the main tower so that CEV-1 could insert tear gas in that area. In that endeavor the CEV started to knock down a corner of the building and a portion of the roof collapsed. Very shortly after this happened, fire was observed in several locations in the compound.

The fire spread very quickly, but even so the openings in the buildings made by the tanks provided a means of escape.

Digitized by Google

One of the HRT agents left the security of his vehicle to help a woman emerging from the compound. She ran from the agent and threw herself into the burning building. The agent entered the building and pulled her out. The woman survived. Nine Davidians exited the compound on April 19th.

3. Contingency Plan For Fire

The FBI anticipated the possibility of fire. Fire trucks were kept far from the scene because the heavy weaponry of the Davidians was too dangerous to the fire fighters. Fire equipment was kept on alert several miles away.

The arson report recognized that there was a delay in the arrival of fire fighting equipment on the scene, but also concluded that "a fire such as this would have likely been too far advanced for effective extinguishment" even under "more favorable" fire fighting circumstances. Therefore, it is unlikely that the lack of more accessible fire fighting equipment impacted the outcome.

Digitized by Google

RECOMMENDATIONS

The Davidians were given every opportunity to leave the compound. Ultimately, under Koresh's total control, some or all of them chose to kill themselves, to kill each other and to murder their own children, rather than to surrender to law enforcement authorities and face the consequences of their armed resistance of the ATF. In the final analysis the deaths of the Davidians were caused by David Koresh.

However, the Department and the FBI should review several areas of operation in order to improve the odds in any similar confrontation in the future:

1. Evaluate the roles of the HRT and the hostage negotiators in resolving similar crises.

2. Evaluate the adequacy of the communications among the different elements in a crisis, particularly between the negotiating and tactical elements. This should be reviewed in the context of the process of gathering and evaluating information. Regular joint strategy meetings should probably be required during the crisis.

3. Evaluate the size of the HRT.

4. Evaluate the need to rotate the Crisis Management Team if any crisis becomes too extended. Fatigue may have been the single most debilitating factor working against the FBI in the stand-off.

Digitized by Google

5.

REDACTED FROM PUBLIC REPORT PENDING RELEASE OF IMPOUNDED MATERIAL.

6. Evaluate funding for the development of a chemical means to render individuals unconscious for a period of time without warning.

Digitized by Google

CONCLUSION

David Koresh engaged in a deliberate campaign to mask his true intentions. Even so, the FBI was extremely accurate in its assessment of Koresh. I conclude that the stand-off was a mass suicide choreographed by Koresh over a two month period. Even if the FBI had been more keenly aware of his intentions, it was limited to gassing the compound as the only non-lethal means of resolving the crisis. The probability that the FBI could have broken Koresh's hold over his followers through negotiations was extremely low based upon what we have learned following the incident.

Under the circumstances, the FBI exhibited extraordinary restraint and handled this crisis with great professionalism.

Edward S.G. Dennis, Jr.*

October 5, 1993

* I am grateful for the material support of my law firm in this endeavor. However, the opinions expressed here are mine and not those of the law firm of Morgan, Lewis & Bockius.

Digitized by Google